UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,434	12/15/2000	Lorin Evan Ullman	AUS9-2000-0703-US1	1867

7590 05/07/2004

EXAMINER
VU, THONG H

Joseph R. Burwell
Law Office of Joseph R. Burwell
P.O. Box 28022
Austin, TX 78755-8022

ART UNIT	PAPER NUMBER
2142	

DATE MAILED: 05/07/2004

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/737,434	ULLMAN, LORIN EVAN	
	Examiner	Art Unit	
	Thong H Vu	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 December 2000*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *15 December 2000* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *5*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Claims 1-21 are pending.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 09/737,431. Although the conflicting claims are not identical, they are not patentably distinct from each other because

(*Application 09/737,431, claim 9*)

An apparatus for managing a distributed data processing system, the apparatus comprising:

configuring means for configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework;

discovering means for dynamically discovering endpoints within the distributed data processing system;

first determining means for determining that a device within the distributed data processing system has at least a first discovered endpoint representing a first network interface card and a second discovered endpoint representing a second network interface card; and

assigning means for assigning a mission criticality characteristic to each discovered endpoint.

(*Application 09/737,434, claim 10*).

A apparatus for managing a distributed data processing system, the apparatus comprising:

configuring means for configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework;

discovering means for dynamically discovering a set of discovered endpoints within the distributed data processing system;

designating means for designating a plurality of discovered endpoints as mission critical endpoints;

first associating means for associating a mission critical twin endpoint with each mission critical endpoint, wherein a mission critical twin endpoint is a discovered endpoint that has **a communication history** with a mission critical endpoint with which the mission critical twin endpoint is being associated.

It was well-known in the art that a monitor tool or database could record the communication history of the endpoints [see Lampell, Chen, Walker references]. The Walker reference discloses a network server monitors all players whose prior playing history meets predefined criteria using database [Walker, col 9 lines 47-col 10 lines 5] It would have been obvious to use the database with history of client node or endpoint based on criteria for monitoring as taught by Walker to enhance the configuring monitoring parameters.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-21 are rejected under 35 U.S.C. § 102(b) as being anticipated by Du et al [Du 5,826,239].

4. As per claim 8, Du discloses an apparatus for managing a distributed data processing system, the apparatus comprising:

discovering means for dynamically discovering endpoints within the distributed data processing system [Du, keep track the dynamic status information, col 13 lines 38-48];

determining means for determining that a first discovered endpoint communicates with a second discovered endpoint [Du, determine whether any valid route exist between the two end-ADMs, col 12 lines 35-45];

monitoring means for monitoring a status of the first discovered endpoint [Du, workflow process monitor col 7 lines 45-58; monitoring status information about each individual process, col 20 lines 1-10];

first updating means for updating a status indicator for the first discovered endpoint [Du, status update procedures, col 17 lines 1-22]; and

second updating means for updating a status indicator for the second discovered endpoint based on a communication history between the first discovered endpoint and the second discovered endpoint [Du, machine 1 (15a) and machine 2 (15b) Fig 1; status and history, col 15 lines 2-27; updating the group status data in the associated resource database, col 21 lines 12-15].

5. As per claim 9, Du discloses retrieving means for retrieving an SNMP table from the first discovered endpoint [Du, SNMP and CMIP gateway, col 9 lines 59-67]; searching means for searching the SNMP table for an address associated with the second discovered endpoint [Du, HP Open engine searching new paths with DBMS, col 12 lines 6-15]; and associating means for associating the first discovered endpoint with the second discovered endpoint in response to finding the address associated with the second discovered endpoint in the SNMP table [Du, SNMP and CMIP gateway, col 9

lines 59-67; determine whether any valid route exist between the two end-ADMs, col 12 lines 35-45].

6. As per claim 10, Du discloses an apparatus for managing a distributed data processing system, the apparatus comprising:

configuring means for configuring monitoring parameters (i.e.: monitoring status indicator) for network interface cards (i.e.: network devices) within the distributed data processing system using a network management framework [Du, a generic framework, col 7 lines 19-35; keep track the dynamic status information, col 13 lines 38-48; machine 1 (15a) and machine 2 (15b), Fig 1];

discovering means for dynamically discovering a set of discovered endpoints within the distributed data processing system [Du, keep track the dynamic status information, col 13 lines 38-48];

designating means for designating a plurality of discovered endpoints as mission critical endpoints [Du, rule nodes with a list of condition-action rules, col 19 lines 50-67];

first associating means for associating a mission critical twin endpoint with each mission critical endpoint, wherein a mission critical twin endpoint is a discovered endpoint that has a communication history with a mission critical endpoint with which the mission critical twin endpoint is being associated [Du, status and history, col 15 lines 2-27; determine whether any valid route exist between the two end-ADMs, col 12 lines 35-45; when certain critical resources are available, col 19 lines 28-36].

7. As per claim 11, Du discloses first retrieving means for retrieving an SNMP table from a discovered endpoint [Du, SNMP and CMIP gateway, col 9 lines 59-67]; first searching means for searching the SNMP table for an address associated with a mission critical endpoint [Du, HP Open engine searching new paths with DBMS, col 12 lines 6-15]; and second associating means for associating the discovered endpoint with the mission critical endpoint in response to finding the address associated with the mission critical endpoint in the SNMP table [Du, SNMP and CMIP gateway, col 9 lines 59-67; determine whether any valid route exist between the two end-ADMs, col 12 lines 35-45].

8. As per claim 12, Du discloses first choosing means, for choosing mission critical twin endpoints from a subset of discovered endpoints which have not been previously specified as twin endpoints as inherent feature of two end-ADMs [Du, two end-ADMs, col 12 lines 35-45].

9. As per claim 13, Du discloses first selecting means for selecting an endpoint in the subset of discovered endpoints that has a most significant communication history with a particular mission critical endpoint [Du, status and history, col 15 lines 2-27; when certain critical resources are available, col 19 lines 28-36]; and first creating means for creating a mission critical twin association between the selected endpoint and the particular mission critical endpoint in response to a determination of the most significant communication history [Du, new path, col 12 lines 16-67].

10. As per claim 14, Du discloses second retrieving means for retrieving an SNMP table from a discovered endpoint in the subset of discovered endpoints [Du, SNM and CMIP gaetway, col 9 lines 59-67];

second searching means for searching the SNMP table for an address associated with the particular mission critical endpoint [Du, HP Open engine searching new paths with DBMS, col 12 lines 6-15];

first obtaining means for obtaining, in response to finding the address associated with the particular mission critical endpoint in the SND/IP table, a value from the SNMP table to be compared with values obtained from other retrieved SNMP tables [Du, comparing to database trigger, col 19 lines 6-27]; and

determining means for determining the most significant communication history based on a comparison of the values obtained from the retrieved SNMP tables [Du, decision making facilities, col 19 lines 6-27].

11. Claims 1-2 and 15-16 contain the similar limitations set forth of apparatus claims 8-9. Therefore, claims 1-2,15-16 are rejected for the similar rationale set forth in claims 8-9.

12. Claims 3-7 and 17-21 contain the similar limitations set forth of apparatus claims 10-14. Therefore,claims 3-7,17-21 are rejected for the similar rationale set forth in claims10-14.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13. Claims 1-21 are rejected under 35 U.S.C. § 103 as being unpatentable over Stupek,Jr. et al [Stupek 6,526,442 B1] in view of Orr et al [Orr 5,191,534].

14. As per claim 8, Stupek discloses an apparatus for managing a distributed data processing system, the apparatus comprising:

discovering means for dynamically discovering endpoints within the distributed data processing system [Stupek, discovered devices, device status, actively monitor, col 5 lines 40-65];

monitoring means for monitoring a status of the first discovered endpoint [Stupek, discovered devices, device status, actively monitor, col 5 lines 40-65];

first updating means for updating a status indicator for the first discovered endpoint [Stupek, updateOperationStatus, col 16 lines 10-67]; and

second updating means for updating a status indicator for the second discovered endpoint based on a communication history (i.e.: database) between the first discovered endpoint and the second discovered endpoint [Stupek, database transaction log, col 16 lines 10-67].

However Satupek doesnot detail determining means for determining that a first discovered endpoint communicates with a second discovered endpoint;

It was well-known in the art that a system automatically monitored and updated the status of change at a first and second workstations [Orr, automatically tracking and updating the status of the engineering change and each associated affected item and corresponding location affected item in response to changes in status initiated at said first and second pluralities of workstations, col 16 lines 4-25][see Booth reference].

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate technique of automatically monitored and updated the status of change at a first and second workstations as taught by Orr into Stupek in order to utilize the automatic monitoring process. Doing so would provide a simple and efficient process to monitor the status of each pair of nodes on the network.

15. As per claim 9, Stupek-Orr disclose retrieving means for retrieving an SNMP table from the first discovered endpoint [Stupek, database transaction log, SNMP tra[, col 14 lines 10-67]; searching means for searching the SNMP table for an address associated with the second discovered endpoint [Stupek, query, filter and select, col 19 lines 22-42]; and associating means for associating the first discovered endpoint with the second discovered endpoint in response to finding the address associated with the second discovered endpoint in the SNMP table [Orr, automatically tracking and updating the status of the engineering change and each associated affected item and corresponding location, col 16 lines 4-25].

16. As per claim 10 Stupek-Orr disclose an apparatus for managing a distributed data processing system, the apparatus comprising:

configuring means for configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework [Orr, automatically tracking and updating the status of the engineering change and each associated affected item and corresponding location affected item in response to changes in status initiated at said first and second pluralities of workstations, col 16 lines 4-25];

discovering means for dynamically discovering a set of discovered endpoints within the distributed data processing system [Orr, automatically tracking and updating the status of the engineering change and each associated affected item and corresponding location affected item in response to changes in status initiated at said first and second pluralities of workstations, col 16 lines 4-25;

designating means for designating a plurality of discovered endpoints as mission critical endpoints [Stupek, defin the relation ship between the executable components, col 7 line 50-col 8 line 14];

first associating means for associating a mission critical twin endpoint with each mission critical endpoint, wherein a mission critical twin endpoint is a discovered endpoint that has a communication history with a mission critical endpoint with which the mission critical twin endpoint is being associated [Orr, automatically tracking and updating the status of the engineering change and each associated affected item and

corresponding location affected item in response to changes in status initiated at said first and second pluralities of workstations, col 16 lines 4-25].

17. As per claim 11, Stupek-Orr disclose first retrieving means for retrieving an SNMP table from a discovered endpoint [Stupek, SNMP based data, col 5 lines 12-39]; first searching means for searching the SNMP table for an address associated with a mission critical endpoint [Stupek, query, filter and select, col 19 lines 22-42]; and second associating means for associating the discovered endpoint with the mission critical endpoint in response to finding the address associated with the mission critical endpoint in the SNMP table [Orr, searching an ID/Identifier, col 7 lines 45-62, col 8 line 61-col 99 lines 23,45-67].

18. As per claim 12, Stupek-Orr disclose first choosing means, for choosing mission critical twin endpoints from a subset of discovered endpoints which have not been previously specified as twin endpoints [Stupek, Query criteria selection, Criteria configuration, schedule criteria, col 19 lines 22-54; col 20 lines 17-65].

19. As per claim 13, Stupek-Orr disclose first selecting means for selecting an endpoint in the subset of discovered endpoints that has a most significant communication history with a particular mission critical endpoint [Stupek, index page, database, col 6 line 7-22]; and first creating means for creating a mission critical twin association between the selected endpoint and the particular mission critical endpoint in

response to a determination of the most significant communication history [Stupek, Create/Modify query, newly created Email notification Operation al group and corresponding jobs col 20 lines 42-col 21 lines 9].

20. As per claim 14, Stupek-Orr disclose second retrieving means for retrieving an SNMP table from a discovered endpoint in the subset of discovered endpoints;

second searching means for searching the SNMP table for an address associated with the particular mission critical endpoint [Orr, the status is compared with the current status, col 12 lines 3-18];

first obtaining means for obtaining, in response to finding the address associated with the particular mission critical endpoint in the SND/IP table, a value from the SNMP table to be compared with values obtained from other retrieved SNMP tables (i.e.: updating a status indicator which provide a mission critical value or priority) [Orr, the status is compared with the current status, col 12 lines 3-18]; and

determining means for determining the most significant communication history based on a comparison of the values obtained from the retrieved SNMP tables [Orr, the status is compared with the current status, col 12 lines 3-18].

21. Claims 1-2 and 15-16 contain the similar limitations set forth of apparatus claims 8-9. Therefore, claims 1-2,15-16 are rejected for the similar rationale set forth in claims 8-9.

22. Claims 3-7 and 17-21 contain the similar limitations set forth of apparatus claims 10-14. Therefore, claims 3-7,17-21 are rejected for the similar rationale set forth in claims10-14.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Thong Vu, whose telephone number is (703)-305-4643.
The examiner can normally be reached on Monday-Thursday from 8:00AM- 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Jack Harvey*, can be reached at (703) 305-9705.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9700.

Any response to this action should be mailed to: Commissioner of Patent and Trademarks, Washington, D.C. 20231 or faxed to :

After Final	(703) 746-7238
Official:	(703) 746-7239
Non-Official	(703) 746-7240

Hand-delivered responses should be brought to Crystal Park 11,2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

Thong Vu
Patent Examiner
Art Unit 2142